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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,817	01/05/2005	Thomas Bruegger	F-8387	8342
28107 7590 02/04/2009 JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,817

Applicant(s)

BRUEMMER, THOMAS

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-17, 20, 22, 24, 25, 31-41, 44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-17, 20, 22, 24-25, 31-41, 44-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The 112 second paragraph rejection is hereby withdrawn for all of the claims except for part of claim 1. In claim 1, step c is still indefinite in the recitation of " material product to a conveyable mixture" because there is no connection between the two features. Is the raw product converted into a conveyable mixture or what? If the product is formed into a conveyable mixture, it is suggested applicant uses this phrasing --- at least partial plasticization and/or gelatinization of the raw material product takes places during extruding to form the raw material product into a conveyable mixture containing a modified starch---.

Claims 1-6, 8-17, 20,22,24-25, 31-41, 44-45, are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al in view of Donnelly et al.

Baker et al disclose a method for processing grain. The process comprises the steps of precooking grain by a low moisture process, preconditioning by hydrating to a total moisture content of 10-40% in a ribbon blender or a preconditioning cylinder, extruding the hydrated material, cutting the extruded material with a rotating knife, drying the cut extrudate and grinding the product. The ground product may be agglomerated by feeding into an agglomerator and adding water and/or steam and/or a binder such as starch, modified starch, gum. The agglomerated product is then dried to a moisture content of about 5-15%. The precooked material may be ground and provided as flour, granules, flakes, pieces or a blend of the three. (see col. 3)

Baker et al do not disclose a preconditioner with mixing and action chambers, an agglomerator with mixing and action chambers having the structure as claimed, the residence time in the mixing and action chambers as claimed, the filling capacity as

claimed, the pressure and temperature in the mixing and action chambers, classifying the agglomerate, reusing the agglomerate not meet the standard size, the speed of the shaft in the mixing and action chambers, the particle size of the agglomerates, using an impact mill and the type of raw materials as claimed.

Donnelly et al disclose a method for forming couscous. The method uses a preconditioner or conditioner horizontal cylinder having an entrance and an exit. The cylinder contains twin laterally juxtaposed counterrotating shafts equipped with paddles to advance the raw material and to mix the material with the steam and water. (see col. 5 lines4-38)

Baker et al teach to use a preconditioning cylinder for hydrating the raw material with water. Baker et al also teach to agglomerate the ground product with water and/or steam. Donnelly et al teach a conditioner cylinder for treating material with steam and water. Thus, it would have been obvious to one skilled in the art to use a conditioning cylinder as taught by Donnelly et al. to carry out the preconditioning and agglomerating. The Donnelly et al preconditioner has the structure as claimed. The different parts of the cylinder are equivalent to the mixing and action chambers. For example, the raw material is advanced in one part of the preconditioner; this is the same as the claimed action chamber. The mixing takes place in a different part of the preconditioner which is equivalent to the claimed mixing chamber. It would have been obvious to one skilled in the art to determine the residence time, the temperature, the pressure and the speed in the preconditioner depending on the type of material being process and the degree of mixing desired. Such determination can readily be determined by one skilled in the art

through routine experimentation. It would have been obvious to fill the preconditioner to any desired capacity depending on the size of the device and the quantity of material being processed. It would have been obvious to classify the agglomerate to size and to select any varying sizes depending on the intended use and the texture wanted. Such factor is a result-effective variable which can readily be determined by one skilled in the art. It would have been obvious to reuse particles not meeting the size standard so that product material is not wasted. This would have been readily apparent to one skilled in the art. It would have been obvious to use a known device to grind the material and impact mill is well known in the art. It would have been an obvious matter of preference to select any time of grain material including wheat flour, corn flour, potato flour etc.. depending on the taste and flavor desired.

In the response filed 11/17/08, applicant argues Baker et al do not teach the discrete first and second preconditioning residence times and combining Baker et al with Donnelly et al cannot cure this defect because the preconditioner taught by Donnelly et al does not have separate and discrete mixing and action chambers. This argument is not persuasive. Baker et al teach to use a preconditioning cylinder for hydration; thus, it would have been obvious to use a known conditioning cylinder such as the one disclosed in Donnelly. The Donnelly preconditioner is divided into different sections with different functions in the sections. This is the same as the claimed separate chambers. The difference resides only in the terminology. On column 5 lines 10-32, Donnelly discloses that the cylinder contains twin juxtaposed counter rotating shafts equipped with paddles oriented at various pitches to advance the raw material.

The preconditioner also includes a water conduit for the introduction of water. The preconditioner is divided into different sections next to each other. In the middle section, the paddles act to mix the material with the steam and water; this is equivalent to the claimed mixing chamber. The paddles in the end portion are located at an angle or pitch such that they relatively tend to push or compact material in a reverse direction. The material is moving in this section; thus, this section is equivalent to the claimed action chamber. Donnelly discloses the pitch and the shaft rpm are adjusted to achieve a dwell time of between 30 seconds to 2.5 minutes. Since the material does not stay at one section and it is moving, the dwelling time at each section is inherently different and reads on the claimed first and second residence time. Applicant argues mixing is followed by densification and not by conveying. There is no limitation set forth in claim 1 about conveying in the action chamber. The claimed method requires for action in the action chamber but does not specifically set forth the action. The pushing or compacting in Donnelly is an action. The material in Donnelly is moved into the end portion.

With regard to claim 2, applicant argues the device of Baker et al in combination with the teachings of Donnelly is incapable or being operated in the manner required by claim 2. This argument is not supported by factual evidence. As pointed out above, the conditioner cylinder disclosed in Donnelly has the same structural orientation as claimed.

With regard to claim 6, applicant argues the conditioner of Donnelly et al cannot possibly function subject to this condition that is contrary to the principle of operation of

the structure of Donnelly et al. This argument is not supported by factual evidence. Applicant does not give reasoning for why the conditioner of Donnelly et al cannot be filled to a certain extent. A conclusion does not equate to factual evidence. Applicant makes the same argument for claims 22,24 which is not persuasive for the same reason.

Applicant's arguments filed 11/17/08 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 2, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794